

Exhibit E

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 _____/
4 DANIEL KLEEGER, LISA STEIN and AUDREY HAYS,
5 Plaintiffs,

6 - v -
7

8 LESTER EBER; ALEXBAY, LLC f/k/a
9 LESTER EBER; LLC; CANANDAIGUA NATIONAL
10 CORPORATION d/b/a CANANDAIGUA NATIONAL
11 BANK & TRUST; ELLIOT W. GUMAER, JR.;
EBER BROS. & CO., INC.; EBER BROS. WINE AND
LIQUOR CORPORATION; EBER BROS. WINE &
LIQUOR METRO, INC.; EBER-CONNECTICUT, LLC ; and WENDY
EBER,
12 Defendants.

13 _____/
14
15 Examination Before Trial of Richard Harris
16 Hawks Jr., held at 700 Crossroads Building, 2 State
17 Street, Rochester New York 14614, on August 20, 2018
18 at a time of 9:00 a.m.
19
20
21
22
23
24

25 REPORTED BY: ASHLEY FALCONE

1 A. They would be looking at owning the shares
2 directly, yes.

3 Q. If you would please turn to the fourth page of
4 the Exhibit. It says at the top, minutes from
5 meeting of Officers for the trust of Allen Eber, do
6 you see that?

7 A. Yes.

8 Q. And this is with the last three page numbers
9 857. So, this refers to a meeting on August 18th,
10 2011, do you see that?

11 A. Yes.

12 Q. It says that Elliot Gumaer, Lester Eber, and
13 Richard Hawks, trustees of the trust of Allen Eber,
14 met at the Canandaigua National Bank in Rochester,
15 New York, to discuss and ratify the actions of the
16 subsidiaries as described below, and discuss other
17 trust business. Is that a fair description of what
18 happened during that meeting?

19 A. At the meeting there were various forms that
20 were presented --

21 MR. CALIHAN: There were various what?

22 A. Forms presented. The actual documentation and
23 so forth was discussed, but I did not see specific
24 references to the loans. We discussed the fact that
25 there are several things that were going on here and

1 needed to be done, but had nothing to do with -- the
2 trustees had nothing to do with the determination of
3 the various obligations.

4 Q. Okay. So, just to make sure we are oriented
5 here, so this is describing the meeting that occurred
6 about ten months before the one we were looking at
7 just a minute ago? So this is --

8 A. Yes.

9 MR. O'BRIEN: You mean the meeting?

10 MR. BROOK: The meeting, yes.

11 MR. O'BRIEN: The conference call meeting?

12 MR. BROOK: Well, the other one was a
13 conference call meeting, and this one was an in
14 person meeting, except, I think it says here, if you
15 look at the next sentence, that Gumaer participated
16 by conference call, and it says Wendy Eber was also
17 present to facilitate and document the discussion, is
18 that correct?

19 THE WITNESS: Yes.

20 BY MR. BROOK:

21 Q. And it says -- the next paragraph reads: The
22 trustees ratified three loans made by Lester Eber to
23 Eber Brothers Metro, Inc., do you see that?

24 A. Yes.

25 Q. And is that a fair description of what took

1 place during that meeting?

2 A. The trustees discussed that, it was -- I don't
3 believe there was ever a vote taken at this meeting.
4 Once again, it comes back to -- if you refer back to
5 the --

6 MR. O'BRIEN: You answered the question.

7 THE WITNESS: Okay.

8 Q. So, is it correct that you would not describe
9 what occurred in that meeting as a ratification by
10 you, of any loans that were made by Lester Eber to
11 Eber Brothers Metro?

12 MR. RAMSEY: Form.

13 A. I would not characterize it as a ratification,
14 because for the first time, we are getting the
15 information of what is happening here, which led to
16 probably the second memo which was the first one here
17 --

18 Q. Minutes.

19 A. -- or minutes, which I had requested information
20 which I had not received.

21 Q. So, jumping down some to the fourth paragraph,
22 it says: After a lengthy discussion about how all the
23 income beneficiaries and third parties were offered
24 the opportunity to participate in the February 26th,
25 2010 loan, but they all declined, and that only based